

AMENDED IN ASSEMBLY JUNE 23, 2005

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 14, 2005

SENATE BILL

No. 61

Introduced by Senator Battin

January 14, 2005

An act to ~~add Section 1363.03 to~~ *amend the heading of Article 2 (commencing with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of, and to add Sections 1363.03 and 1363.09 to, the Civil Code, relating to common interest developments.*

LEGISLATIVE COUNSEL'S DIGEST

SB 61, as amended, Battin. Common interest developments: elections.

Existing law creates and regulates common interest developments and requires them to have a recorded declaration containing specified information and permits them to levy assessments. Existing law establishes, in certain situations, voting requirements for amendments of the declaration and the levy of assessments. *Existing law establishes the Common Interest Development Open Meeting Act.* Existing law requires that a common interest development be managed by an association. Existing law regulates a broad range of activities associated with statewide, local, and special elections.

This bill would require that elections within a common interest development ~~for specified matters~~ *regarding assessments, selection of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property* be held by secret ballot, as specified. The bill would ~~prohibit a person from counting votes in an election in which he or she is a~~

~~candidate~~ require that a common interest development select an independent 3rd party as an inspector of elections, who would be granted specified powers, for these elections. The bill would require that ballots be mailed to each member at least 30 days prior to the deadline for voting, be handled in a specified manner, and that votes be counted and tabulated by the inspector in public at a noticed meeting. The bill would establish additional procedures for ~~notification of elections and~~ storage and review of election results, ~~and would require that elections held by mailed, written ballot be conducted according to specified provisions.~~ The bill would permit a member of an association to bring a civil action, as specified, for violations of these provisions, *and other provisions regarding open meetings*, by his or her association, *and would impose a civil penalty of up to \$1,000 per violation.*

The provisions of this bill would be operative only if AB 1098 is enacted and becomes effective, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 2 (commencing with
2 Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of
3 the Civil Code is amended to read:

4
5 Article 2. ~~Common Interest Development Open Meeting Act~~
6 Elections and Meetings

7
8 SECTION 1.—

9 SEC. 2. Section 1363.03 is added to Article 2 (commencing
10 with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of
11 Division 2 of the Civil Code, to read:

12 1363.03. (a) ~~Elections within a common interest~~
13 ~~development regarding assessments, selection of association~~
14 ~~board members, and amendments to governing documents shall~~
15 ~~be held by secret ballot.~~ Notwithstanding any other law or
16 provision of the governing documents, an election within a
17 common interest development regarding assessments, selection
18 of members of the association board of directors, amendments to
19 the governing documents, or the grant of exclusive use of

1 common area property pursuant to subdivision (d) of Section
2 1363.07 shall be held by secret ballot in accordance with the
3 procedures set forth in this section.

4 (b) (1) The association shall select an independent third party
5 or parties as an inspector of elections. The number of inspectors
6 of election shall be one or three. An inspector of elections may
7 not simultaneously serve as a member of the board of directors.
8 The selection shall occur in one of the following ways:

9 (A) The board may appoint an inspector or inspectors of
10 elections.

11 (B) The association, through its rule-making process, may
12 adopt procedures in an open meeting for selecting an inspector
13 or inspectors of elections.

14 (C) The association may require that the inspector or
15 inspectors be elected by the members of the association.

16 (2) For the purposes of this section, an independent third
17 party includes, but is not limited to, a volunteer poll worker with
18 the county registrar of voters, a licensee of the California Board
19 of Accountancy, or a notary public who is not currently employed
20 or under contract to the association for any other compensable
21 services. An independent third party may be a member of the
22 association, but may not be a member of the board of directors
23 or a candidate for the board of directors or related to a member
24 of the board of directors or a candidate for the board of
25 directors.

26 (3) The inspector or inspectors of election shall do all of the
27 following:

28 (A) Determine the number of memberships entitled to vote and
29 the voting power of each.

30 (B) Determine the authenticity, validity, and effect of proxies,
31 if any.

32 (C) Receive votes and ballots.

33 (D) Hear and determine all challenges and questions in any
34 way arising in connection with the right to vote.

35 (E) Count and tabulate all votes.

36 (F) Determine when the polls shall close.

37 (G) Determine the result of the election.

38 (H) Perform any acts as may be proper to conduct the election
39 with fairness to all members in accordance with this section and

1 *all applicable rules of the association regarding the conduct of*
2 *the election that are not in conflict with this section.*

3 *(4) An inspector of election shall perform his or her duties*
4 *impartially, in good faith, to the best of his or her ability, and as*
5 *expeditiously as is practical. If there are three inspectors of*
6 *election, the decision or act of a majority shall be effective in all*
7 *respects as the decision or act of all. Any report made by the*
8 *inspector or inspectors of election is prima facie evidence of the*
9 *facts stated in the report.*

10 *(c) Any instruction given in a proxy issued for an election that*
11 *directs the manner in which the proxy holder is to cast the vote*
12 *shall be set forth on a separate page of the proxy that can be*
13 *detached and given to the proxy holder to retain. The proxy*
14 *holder shall cast the member's vote by secret ballot. A person*
15 *shall not count votes in an election in which he or she is a*
16 *candidate.*

17 ~~*(b) Election ballot.*~~

18 *(d) Ballots shall be mailed by first-class mail or delivered by*
19 *the association to every member not less than 30 days prior to*
20 *the deadline for voting. In order to preserve confidentiality, a*
21 *voter may not be identified by name, address, or lot, parcel, or*
22 *unit number on the ballot. The association shall use as a model*
23 *those procedures used by California counties for ensuring*
24 *confidentiality of voter absentee ballots, including all of the*
25 *following:*

26 *(1) The ballot itself is not signed by the voter, but is inserted*
27 *into an envelope that is sealed. This envelope is inserted into a*
28 *second envelope that is sealed. In the upper left hand corner of*
29 *the second envelope, the voter prints and signs his or her name,*
30 *address, and lot, or parcel, or unit number that entitles him or*
31 *her to vote.*

32 *(2) The second envelope is addressed to the inspector or*
33 *inspectors of election, who will be tallying the votes. The*
34 *envelope may be mailed or delivered by hand to a location*
35 *specified by the inspector or inspectors of election. The member*
36 *may request a receipt for delivery.*

37 *(e) All votes shall be counted and tabulated by the inspector or*
38 *inspectors of election in public at a properly noticed meeting of*
39 *the board of directors. Any candidate or other member of the*
40 *association may witness the counting and tabulation of the votes.*

1 No person, including a member of the association or an
2 employee of the management company, shall open or otherwise
3 review any ballot prior to the time and place at which the ballots
4 are counted and tabulated.

5 (f) The results of the election shall be promptly reported to the
6 board of directors of the association and shall be recorded in the
7 minutes of the next meeting of the board of directors and shall be
8 available for review by members of the association. Within 15
9 days of the election, the board shall publicize the results of the
10 election in a communication directed to all members.

11 (g) At all times during a campaign, the sealed ballots shall be
12 in the custody of the inspector or inspectors of election or at a
13 location designated by the inspector or inspectors until after the
14 tabulation of the vote, at which time custody shall be transferred
15 to the association.

16 (h) After tabulation, election ballots shall be stored by the
17 association in a secure place for no less than one year after the
18 date of the election. In the event of a recount or other challenge
19 to the election process, the association shall, upon written
20 request, make the ballots available for inspection and review by
21 association members or their authorized representatives. ~~In an~~
22 ~~election conducted by mailed, written ballot, any~~ Any recount
23 shall be conducted in a manner that shall preserve the
24 confidentiality of the vote.

25 ~~(e) The board of directors of an association shall notify all of~~
26 ~~the eligible voters of the association of an election by first-class~~
27 ~~mail postage prepaid not less than 10 days and not more than 60~~
28 ~~days prior to the occurrence of the election, except as provided in~~
29 ~~subdivision (e) of Section 1355.5, as it pertains to notification~~
30 ~~requirements.~~

31 ~~(d) If the election is held by mailed, written ballot, the election~~
32 ~~and balloting shall be conducted in accordance with Section 7513~~
33 ~~of the Corporations Code, notwithstanding any provisions to the~~
34 ~~contrary in the governing documents. In this event, the written~~
35 ~~ballots with the signatures of the voters affixed to them shall be~~
36 ~~timely mailed to an independent third party who shall verify the~~
37 ~~signature by comparing it to those signatures in records on file~~
38 ~~with the association at the time of the notification of the election.~~
39 ~~The independent third party shall validate, tabulate, and certify~~
40 ~~the vote, and the results shall be promptly reported to the board~~

1 of directors of the association. For purposes of this section, an
2 independent third party includes, but is not limited to, a licensee
3 of the State Board of Accountancy.

4 (e) ~~The results of an election shall be recorded in the minutes~~
5 ~~of the next meeting of the board of directors and shall be~~
6 ~~available for review by members of the association.~~

7 (f) ~~A member of an association may bring a civil action for~~
8 ~~declaratory relief, injunctive relief, restitution, or a combination~~
9 ~~thereof for a violation of this section by an association of which~~
10 ~~he or she is a member.~~

11 (g)
12 (i) The provisions of this section apply to both incorporated
13 and unincorporated associations, notwithstanding any contrary
14 provision of the governing documents.

15 *SEC. 3. Section 1363.09 is added to Article 2 (commencing*
16 *with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of*
17 *Division 2 of the Civil Code, to read:*

18 *1363.09. (a) A member of an association may bring a civil*
19 *action for declaratory or equitable relief for a violation of this*
20 *article by an association of which he or she is a member,*
21 *including, but not limited to, injunctive relief, restitution, or a*
22 *combination thereof, within one year of the date the cause of*
23 *action accrues. Upon a finding that the election procedures of*
24 *this article, or the adoption of and adherence to rules provided*
25 *by Article 4 (commencing with Section 1357.100) of Chapter 2,*
26 *were not followed, a court may void any results of the election.*

27 *(b) A member who prevails in a civil action to enforce his or*
28 *her rights pursuant to this article shall be entitled to reasonable*
29 *attorney's fees and court costs, and the court may impose a civil*
30 *penalty of up to one thousand dollars (\$1,000) for each violation,*
31 *except that each identical violation shall be subject to only one*
32 *penalty if the violation affects each member of the association*
33 *equally. A prevailing association shall not recover any costs,*
34 *unless the court finds the action to be frivolous, unreasonable, or*
35 *without foundation.*

36 *(c) A cause of action under Section 1363.03 with respect to*
37 *access to association resources by candidates and advocates, the*
38 *receipt of a ballot by a member, or the counting, tabulation, or*
39 *reporting of, or access to, ballots for inspection and review after*

1 *tabulation may be brought in small claims court if the amount of*
2 *the demand does not exceed the jurisdiction of that court.*
3 *SEC. 4. This act shall become operative only if Assembly Bill*
4 *1098 of the 2005-06 Regular Session is enacted and becomes*
5 *effective on or before January 1, 2006.*

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